outside the territorial waters of the Colony as far as the question of importation was concerned, or else that he omitted to give due weight to the testimony of the Customs Officers to which I have referred. The plane was a Pan-American Airways aircraft. Mr. Boyce-Taylor, one of these Customs Officers, said he had kept it under observation and that he had seen mail taken from it. It is common knowledge that the big international airlines do not operate internally in Malaya. In the light of these factors and in the absence of anything in the evidence suggesting some abnormal circumstance, e.g. a forced landing upcountry, I do not think any reasonable doubt can be entertained that this plane flew into Singapore from outside local territorial waters. This evidence also excludes, I think, any possibility of the gold having been imported from the Federation, the Cocos or Keeling Islands, or Christmas Island, places to which the 1950 Order does not apply.

I now turn to the second part of the Appeal. This involves the issue whether the facts established by the Crown *prima facie* proved the respondent was a conspirator in the illegal importation of the gold. The first observation I would make in this connection is that I think it is clear there must have existed a conspiracy between one or more persons at the place the gold was put on the plane, or, alternatively some person travelling on the plane either as passenger or member of the crew, on the one hand, and one or more persons in Singapore who were to receive the gold on arrival. The only other possible theory does not seem to me at all tenable; that is an illegal importer on the plane trusting to luck came across the respondent and forthwith arranged with him to take charge of the gold.

The learned District Judge held there was no evidence the respondent had engaged with any other person or persons in any conspiracy for the importing of gold into the Colony. True there is no direct evidence, but as *Kenny* remarks (Outlines of Criminal Law 15th Ed. p. 340) "it rarely happens that the actual fact of the conspiracy can be proved by direct evidence; since such agreements are usually entered into both swiftly and secretly". Now it does not appear that to constitute a conspiracy it is essential a person must have been a party to the wrongful agreement from the start, provided that at some stage before the unlawful act is carried out he joins in the agreement to carry it out. Again it is clear that there need not be communication between each conspirer and every other, provided that there be a design common to them all (*R. v. Meyrick and Ribuffi*[1]). So the issue, as I see it, resolves itself thus: having regard to all the circumstances does the evidence for the Crown raise the *prima facie* inference that at some time before the gold was imported, i.e. carried inside territorial limits, the respondent had become a party to the conspiracy for its illegal importation, or is it also consistent with the respondent being a "stooge" who merely took over the gold on his principal's instructions? To my mind when due weight is given to such circumstances as (1) the nature of the respondent's employment at the Airport; (2) the value of the gold — in the region of $80,000 — being such that the illegal importers were very likely to make sure that it only passed into — from their point of view — trusted hands; (3) the preparedness of the respondent for receiving the slabs of gold as evidenced by the special waistcoat he was wearing under his singlet and his conduct just before he was apprehended, there were adequate grounds for the District Judge to hold there was a case to meet. In expressing this opinion I should make it clear that I have not overlooked the statement made by the respondent to the Customs Officials that he had had the gold since the Japanese Occupation, but I do not propose to comment upon it in view of the course I have decided to take.

The order of acquittal is set aside and I direct that the District Judge should proceed to call upon the respondent for his defence.

Order Accordingly.

V. DANIEL v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) March 16, 1956]

[K. L. — Criminal Appeal No. 5 of 1956]

Emergency (Rubber Control) Regulations, 1949 — Charge of being found in unlawful possession of scrap rubber — Quantum of evidence to substantiate charge — Reasonable suspicion — Admissibility of documentary evidence — Evidence Ordinance, 1950, ss. 60, 159 and 160 — Duty of prosecution to call witness.

The appellant was the manager of Lilford Estate, a rubber estate of over 195 acres of planted rubber; apart from 50 acres of newly planted rubber the estate consisted of old rubber trees. On November 2, 1955 a lorry driver was transporting 16½ bags of scrap rubber from a store in the New Village to Ban Lee Rubber Factory; the appellant was driving in his car in front of the lorry loaded with the scrap rubber. The lorry was stopped in the compound of Ban Lee Rubber Factory by an Inspector of Police and at that moment the appellant stated to the Inspector that the rubber was his. The lorry was then directed to the Police Station where the rubber was weighed. The Police Inspector produced the weigh bridge ticket (Ex. p2) which showed that the rubber on the lorry weighed 19 cwts. 7 lbs. The appellant produced to the Inspector his certificate of registration of Rubber cultivation for Lilford Estate (Ex. p. 3) and the lorry driver produced the lorry log book (Ex. p. 4). An expert witness gave evidence that it would not be possible for the rubber in question to be yielded by the estate by November 2, 1955 after the yield of

20 piculs and 16 kts. delivered on October 26, 1955; he also stated that the scrap rubber was not the normal shape and that the shape was consistent with its having been carried underneath a person's clothes. The appellant was convicted on a charge of being found in unlawful possession of the scrap rubber, an offence under the provisions of the Emergency (Rubber Control) Regulations, 1949.

Held: (1) in charges of being found in unlawful possession of rubber under reg. 4(1) of the Emergency (Rubber Control) Regulations it is not the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt: it is sufficient if circumstances are proved which give rise to a reasonable suspicion that the rubber is stolen or unlawfully obtained — the burden is not so heavy as the burden on the prosecution in proving the guilt of the accused beyond reasonable doubt; (2) the fact that the log book in this case (Ex p. 4) was not written by the driver himself did not make it inadmissible for the purpose of enabling the driver to refresh his memory: the entries were made by his sister on his direction and he affirmed the accuracy of the entries; (3) although it is an accepted principle that it is the duty of the prosecution to see that justice is done and this implies that if the prosecution know of a credible witness who can speak of facts which go to show the prisoner's innocence, the prosecution must call that witness, this does not imply that the prosecution must call all witnesses available.

Cases referred to :—

(1) *Soo Sing v. Public Prosecutor* (1951) M.L.J. 143; 2 M.L.R. 122.
(2) *R. v. Power* (1919) 1 K.B. 572.
(3) *Miller v. Madho* L.R. 23 I.A. 106.
(4) *Moh Yee Chong v. Public Prosecutor* (1955) M.L.J. 115.
(5) *Booth v. Clive* 138 E.R. 327, 330.
(6) *In re a Solicitor* (1945) K.B. 368, 371.
(7) *Wicklow & Wexford Railway Co. v. Slattery* (1878), 3 App. Cas. 1155, 1197.
(8) *McArdle v. Egan & Ors.* (1934), 150 L.T. 412; 98 J.P. 103.
(9) *Hicks v. Faulkner* (1878), 8 Q.B.D. 167.
(10) *Adel Muhammed El Dabbah v. Attorney-General, Palestine* (1944) 2 All E.R. 139; (1944) A.C. 156.
(11) *R. v. Shanmugam* (1932) M.L.J. 75.

MAGISTRATE'S CRIMINAL APPEAL.

Sir Roland Braddell (*N. A. Marjoribanks* with him) for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Buhagiar J. : — The appellant was charged with being found in unlawful possession of 19 cwts. and 7 lbs. of scrap rubber, an offence against the provisions of regulation 4(1) of the Emergency (Rubber Control) Regulations, 1949, and punishable under regulation 5(2) of the same Regulations.

The appellant was found guilty, convicted and sentenced to two years imprisonment.

This is an appeal against conviction.

The facts are as follows: The appellant is the manager of Lilford Estate, a rubber estate of 195 acres 2 roods and 10 poles of planted rubber; apart from 50 acres of newly planted rubber the estate consist of old rubber trees. On the 2nd November, 1955, one Wong Yoon Thai, a lorry driver (P.W.4) was transporting 16½ bags of scrap rubber from a store in the New Village to Ban Lee Rubber Factory; the appellant was driving in his car in front of the lorry loaded with the scrap rubber. The lorry was stopped in the compound of Ban Lee Rubber Factory by Inspector of Police Kassim Ali bin Mohammed, P.W.1. At that moment the appellant stated to P.W.1 that the rubber was his. P.W.1 directed the lorry with the rubber to High Street Police Station where the rubber was weighed. There were 16½ bags (Ex. P1). The appellant produced to the Inspector his certificate of registration of Rubber cultivation for Lilford Estate (Ex.P3) and the lorry driver (P.W.4) produced the lorry log book in which certain entries were made, (Ex.P.4); the translation of certain entries in P.4 is included in Ex.P.5.

Mr. Hunter, an expert witness, (P.W.5), gave as his opinion that the monthly yield of scrap rubber from Lilford Estate would be about 1,000 lbs. for the whole estate, while P.W.3, one of the partners in the Estate estimated the monthly yield to be 24 to 25 piculs (about 3,000 lbs): it is clear, however, from his evidence that this figure was more in the nature of guess work. In cross-examination Mr. Hunter said that there could be only a 10% error in his estimate, at the outside there would be 20%; he also eliminated the possibility of squeezing by saying that the latex must be in the trees before it can be squeezed but he saw that there was no latex in the trees. Mr. Hunter also said that it would not be possible for another 2135 lbs. of scrap to be yielded by the estate by the 2nd November after the yield of 20 piculs and 16 katies on 26th October, 1955 (this latter amount appears in Ex.P.3 as having been bought by one Ghee Hong on the said date)

The entries in Ex.P.4 (Tr. Ex.P.5) show that between the 20th October, 1955 and the 2nd November, 1955, Wong Yoon Thai, the lorry driver, P.W.4, transported a total of 80½ bales of rubber from the New Village to "Kuala Lumpur Ban Lee".

The Inspector of Police, P.W.1 produced in Court the weigh bridge ticket, Ex.P2, which shows that the rubber on the lorry on the 2nd November, 1955, weighed 19 cwts. 7 lbs.

Mr. Hunter, P.W.5, also stated that the scrap rubber, Ex. P.1 is not the normal shape; the shape was consistent with its having been carried underneath a person's clothes.

Sir Roland Braddell who appeared with Mr. Marjoribanks for the appellant submitted that the main point for decision is whether or not the prosecution produced enough evidence to give rise to the presumption in regulation 4(1). He made two preliminary submissions. The first was that if in fact at the conclusion of the prosecution evidence no case against the appellant had been made out the evidence for the defence must be completely ignored in this appeal; he referred to *Soo Sing v. Public Prosecutor*[1], where it was held that the case of *R. v. Power*[2] was not applicable in the Magistrates' Courts of the Federation of Malaya. There is no question that *Soo Sing's* case put away any doubt that there may have been as to the correct interpretation of section 173(f) of the Criminal Procedure Code and even if I disagreed with the decision, and I do not, I would be bound by it. I would also express the hope that the law be amended to make the sound and logical principles laid down in *R. v. Power*[2] applicable in this country

The second preliminary point was that failure by counsel to object to the admission of inadmissible evidence does not make such evidence admissible Sir Roland referred to *Miller v. Madho*[3]. Again it is well established that although the principle *ommis consensus tollit errorem* applies to evidence in civil cases, it does not apply to criminal cases where facts cannot be proved by evidence which is inadmissible and which is admitted by consent, express or implied.

After these preliminary submissions Sir Roland argued the appeal on the following grounds :—

(a) that Ex. p. 2 was inadmissible;
(b) that Ex. p. 4 was inadmissible;
(c) that the prosecution failed to call all the material evidence and such failure raises the presumption against them under section 114(g) of the Evidence Ordinance, 1950.

Another point raised was the quantum of evidence necessary in cases of this nature.

It is convenient, for reasons which will appear later in this judgment, if I start with the last point first. Sir Roland referred to *Moh Yee Chong v. Public Prosecutor*[4] where Thomson J. in delivering oral judgment said at p. 115 :—

"But if the rubber in question is such as may be reasonably suspected of being stolen or fraudulently obtained, then, and on that being established, a *prima facie* case of unlawful possession is made out and the onus then passes to the accused person if he is to avoid conviction of proving that his possession of such rubber was not unlawful."

The learned President relied on this passage in his grounds of judgment. Towards the end of that judgment the following passage appears, at p. 116: "I am not prepared to discuss the nature or the quantum of the evidence that is necessary to establish the condition which effects a reversal of the onus of proof under the Regulation, that is, that the rubber must be reasonably suspected of being stolen. I am inclined to think very little evidence will suffice to do so. But there must be something objective, some circumstances which the Court of trial accepts as being sufficient in all the circumstances of the case to create a reasonable suspicion. In this case there was nothing of the sort." Sir Roland submitted that this last passage is an *obiter dictum* and invited the Court not to accept it, particularly that part where it is said: "I am inclined to think *very little evidence* will suffice to do so." The learned Counsel for the appellant submitted that although it was not the duty of the prosecution in such cases to prove the case beyond reasonable doubt the prosecution had to prove the case "with reason." He referred to *Booth v. Clive*[5], and *In re a Solicitor*[6] where the words "reasonably", "according to reason" are discussed. "Reasonable" is a word which is inherently vague and is used in phrases which are difficult to define, e.g. "reasonable doubt", "reasonable certainty" and, as appears from the many reported cases "the reasonable man" is a complex creature. In a dissenting judgment in Dublin, *Wicklow and Wexford Railway Co. v. Slattery*[7] Lord Coleridge made "the reasonable man" an instrument for convicting the bench of unreasonableness. Notwithstanding these difficulties, however, reasonableness remains the test and guide for the decision of various matters.

I do not think it is necessary for me to add anything to what Thomson J. said; for after saying that "very little evidence will suffice" he went on to say "but there must be something objective, some circumstances which the Court of trial accepts as being sufficient in all the circumstances of the case to create a reasonable suspicion." And this is what regulation 4(1) of the Emergency (Rubber Control) Regulations requires. Under that regulation two things must be proved, namely :—

(1) possession of rubber; and
(2) a reasonable suspicion that the rubber is stolen or unlawfully obtained.

No hard and fast rules can be laid down as to what circumstances give rise to a reasonable suspicion; it is not possible to do so; each case must be considered on its merits. One thing is, however, clear and that is that it is not the duty of the prosecution to prove the guilt of the defendant; it is sufficient if circumstances are proved which give rise to a reasonable suspicion.

When evidence has been adduced to show these two elements, then the burden is on the defendant to satisfy the Court that he was lawfully in possession of such rubber. This is far from saying that the prosecution has to prove that the defendant was in possession of stolen rubber; all that is necessary is to show that

there are circumstances which raise a suspicion but not a fanciful, flimsy and fantastic suspicion but a reasonable one. This burden is not so heavy as the burden on the prosecution in proving the guilt of the accused beyond reasonable doubt and in my opinion that is what Thomson J. had in mind when he said "very little evidence will suffice" as he made it quite clear that there must be circumstances "to create a reasonable suspicion."

In my opinion the question of determining what amounts to a reasonable suspicion in cases under regulation 4(1) and other similar statutory provisions is similar to that in cases of actions for illegal or false arrest or for malicious prosecution. The principle in such cases has been clearly laid down in the well-known case of *McArdle v. Egan & Ors.*[8]. The law as to the powers of constables to arrest without a warrant is concisely stated in *Bullen & Leake*, 3rd ed. at p. 795, note, as follows :—

"A constable is justified in arresting a person without a warrant, upon a reasonable suspicion of a felony having been committed and of the person being guilty of it."

In cases of false arrest what is to be considered is whether at the time of the arrest the constable had reasonable cause to suspect the arrested person; the inquiry is as to the state of mind of the constable when he made the arrest. It is not necessary for the constable to satisfy himself that the person he is about to arrest is guilty; circumstances which raise a reasonable suspicion are sufficient; as Lord Wright said in his judgment in *McArdle's Case*[8], at p. 412 :—

"It has to be remembered that police officers, in determining whether or not to arrest, are not finally to decide the guilt or innocence of the man. Their functions are not judicial, but ministerial . . . .".

And at p. 412, Lord Wright said :—

"So that the inquiry is as to the state of mind of the chief constable at the time when he ordered the arrest, and the inquiry involves that it must be ascertained what information he had at the time, even though that information came from others. Of course, the information must come in a way which justifies him in giving it credit; the suspicion upon which he must act. and indeed ought to act, in the course of his duty, must be a reasonable suspicion."

In *Hicks v. Faulkner*[9], Hawkins J., in dealing with the question as to what constitute "reasonable and probable cause" in an action for malicious prosecution said, at p. 173 :—

"The question of reasonable and probable cause depends in all cases, not upon the actual existence but upon the reasonable *bona fide* belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of — no matter whether this belief arises out of the recollection and memory of the accuser, or out of information furnished to him by another. It is not essential in any case that facts should be established proper and fit and admissible as evidence to be submitted to the jury upon an issue of actual guilt of the accused. The distinction between facts to establish actual guilt and those required to establish a *bona fide* belief in guilt should never be lost sight of in considering such cases as that I am now discussing. Many facts admissible to prove the latter, would be wholly inadmissible to prove the former."

With regard to Ex.P2, the weigh bridge ticket, it was submitted that this was not admissible to prove the weight of the rubber in question, that is Ex.P.1, on the ground that the person who weighed the rubber was not produced as a witness. Now reading the evidence of the Police Inspector (P.W.1) as recorded by the learned President it seems to me that what this evidence amounts to is this, that, although the Inspector did not himself carry out the operation of weighing the rubber, such operation was carried out under his direction and supervision; but it was argued that this is not clear. Even assuming that the rubber was not weighed in the Inspector's presence and under his supervision, the prosecution has not failed to show that there was a sufficient quantity of rubber which together with other circumstances raises a reasonable suspicion for the purposes of regulation 4(1); although, without infringing the rule relating to direct evidence, evidence may, under section 60 of the Evidence Ordinance. 1950, be given with reference to the existence or condition of any material thing, (other than document), without that material thing being produced in Court, the prosecution, in this case has produced the rubber in Court, Ex.P.1 consisting of sixteen and a half bags; Ex.P.1 was before the learned President and was on the hearing of this appeal produced in Court building although only one bag was produced in Court. And I do not think that it requires any special knowledge of weights and measures to enable the Court to say that the weight of those 16½ bags of scrap if not 19 cwts. 7 lbs. was very near that figure. For the purpose of establishing a circumstance which together with other facts raises a reasonable suspicion it was not essential to have the exact weight of the rubber in question.

With regard to Ex.P.4 it was argued that this was not admissible in evidence because the entries therein were not made by P.W. 4 but by his sister who was not called as a witness and P.W.4 was giving evidence from that exhibit.

Now there are two points to be considered in connection with this exhibit; first the production of this exhibit by the Police Inspector, P.W.1, and secondly the evidence given by P.W.4 as to its contents.

Ex.P.4 was produced by the Police Inspector P.W.1 who stated that this lorry logbook was produced to him by the driver P.W. 4 when the lorry was taken to the Police Station on the 2nd November, 1955; it

was admitted and marked Ex.P.4 by the Court. There is no question that the log book was not admissible in evidence to prove the contents thereof; but the fact that that document was produced by the lorry driver at a time when there was no reasonable and probable cause to believe that the entries therein were false was relevant as one of the circumstances on which, as the prosecution allege, the reasonable suspicion that the rubber in question was not lawfully obtained was found. With regard to the entries in that document oral evidence was given by P.W.4. Now a document may be used in giving evidence for two purposes, namely, (a) to refresh his memory (section 159 of the Evidence Ordinance) and (b) to testify to facts stated in the document (section 160). In the first instance the witness is not giving evidence without specific recollection of the facts; after reference to the document his memory is refreshed and I do not think that in such a case there is any reason or necessity for the introduction of the document itself. In the second instance what the witness says amounts to this : that he has no recollection whatsoever of the facts and that all he can say is that certain entries had been made at the time and that such entries would be true and accurate; then it is necessary to introduce the document in evidence. In the present case P.W.4 gave evidence as to the contents of Ex.P.4; although in cross-examination he stated that he was giving evidence from Ex.P.4, it is quite clear that he was not giving evidence without a specific recollection of the facts; he was in the strict sense of the term refreshing his memory and after reference to the document as to the dates and quantity of the goods carried for the appellant he could testify to existing knowledge independently of the document; the witness affirming the truth of the memorandum. I do not consider that because the entries in the logbook were not made by P.W.4 himself in his own handwriting is any objection to admitting the document for the purpose of enabling that witness to refresh his memory; the entries were made by the witness' sister on his dictation and he insisted, as he said, in cross-examination, on the accuracy of the entries.

The last point argued on appeal was that the prosecution failed to call all the necessary evidence. It was submitted that if rubber had been delivered to Ban Lee Rubber Factory there would be in this factory's books of accounts entries of rubber which had been delivered to them for milling or for purchase, the quantities of such rubber and, if they were purchasers, the price paid; but the prosecution did not call anybody from the factory to give evidence on this point. It is an accepted principle that it is the duty of the prosecution to see that justice is done and this implies that if the prosecution know of a credible witness who can speak of facts which go to show the prisoner's innocence, the prosecution must call that witness. It does not, however, imply that the prosecutor must call all witnesses available. Thus it was held by their Lordships of the Privy Council in *Adel Muhammed El Dabbah v. A. G. of Palestine*[10] that it should be the general practice of prosecuting counsel, if they find no sufficient reason to the contrary, to tender for cross-examination by the defence witnesses whose names appear on the information, but it is a matter for the discretion of the prosecutor. (See also *Rex v. C. Shanmugam*[11]). It is also an accepted principle, as Sir Alfred Denning points out in his book the Road to Justice, that if prosecuting counsel knows of a material witness who can speak of relevant matters, but whose credibility is in doubt, then although he need not call him himself, he must tell the prisoner's counsel about him so that he can call him. I do not consider that the prosecution was wrong in not calling any such witness if there were other sufficient circumstances to raise a reasonable suspicion against the appellant. The calling of such a witness would not necessarily have the effect of negativing the reasonable suspicion raised. As it has been pointed out earlier it is not the duty of the prosecution to prove that the accused is guilty beyond reasonable doubt; all that the prosecution has to prove is that there are circumstances which raise a reasonable suspicion that the rubber has been unlawfully obtained and in my opinion the prosecution has adduced evidence to prove such circumstances.

A very relevant circumstance is the shape of the rubber or at least of a great number of the sheets of rubber in Ex. P1; I do not think that one can ignore the methods adopted by tappers in taking out rubber from an estate and on seeing this rubber one cannot but come to the conclusion that its shape is, as P.W.5 said consistent with its having been carried underneath a person's clothes; this circumstance is, of course not to be taken by itself, but together with the other circumstances which have been proved raises a reasonable suspicion as to the origin of the rubber.

One last point I would like to mention; it was submitted in reply by Mr. Marjoribanks that it was the policy of the estate not to sell scrap rubber every month but to allow it to accumulate, and that the rubber found in possession of the appellant on the 2nd November, 1955, may reasonably have been such

accumulation. Now there may be various reasons for allowing quantities of rubber to accumulate and one of them may be to sell at a time when rubber is fetching a good price. On examining Ex.P3 one finds that at least since July 1953 scrap rubber was disposed by Lilford Estate at least once every two months; Ex. P3 also shows that at no time since October 1952 has scrap rubber been sold at a higher price than in August 1955 when the rate per pikul was $65. For these reasons again it is reasonable to presume that the rubber in question was not the result of accumulation.

For the above reasons I hold that the prosecution has adduced sufficient evidence of circumstances which raise a reasonable suspicion that the rubber was unlawfully obtained and that the learned President was right in calling upon the appellant to make his defence; there was no evidence sufficient to satisfy the Court that he was lawfully in possession of the rubber and he was rightly convicted.

The appeal must be dismissed.

Appeal dismissed.

Solicitors: *Lovelace & Hastings.*

LEE LIAN & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) August 7, 1956]

[Ipoh — Criminal Appeal No. 34 of 1956]

Criminal Procedure Code (Cap. 6), s. 113(i) — Identification parade proceedings — Evidence — Inadmissible — Whether s. 157 of the Evidence Ordinance, 1950 varies the absolute prohibition contained in subsection (i) of s. 113 of the Criminal Procedure Code.

Evidence of identification parade proceedings are statements made to the Police during the course of Police investigation and are therefore inadmissible by virtue of subsection (i) of section 113 of the Criminal Procedure Code (Cap. 6).

Section 157 of the Evidence Ordinance, 1950, does not vary the absolute prohibition contained in subsection (i) of section 113 of the Criminal Procedure Code (Cap. 6).

[Editorial Note: Section 113(i) of the Criminal Procedure Code (Cap. 6) corresponds to section 121(1) of the Colony Criminal Procedure Code; and section 156 of the Evidence Ordinance, 1950, corresponds to section 157 of the Colony Evidence Ordinance.]

Cases referred to:—

(1) *Harendra Nath v. R.* A.I.R. 1925 Cal. 161.
(2) *Krishna Kahar v. R.* A.I.R. 1940 Cal. 182.
(3) *Krishnachandra Dienki v. R.* I.L.R. 1935 Cal. 918, 919.
(4) *Lala Lalung v. R.* A.I.R. 1939 Cal. 176.
(5) *Nagina v. R.* A.I.R. 1921 All. 215.
(6) *Sawar Khan v. R.* 1920 A.I.R. Pat. 334.
(7) *Ramadhim Brahmin v. R.* A.I.R. 1929 Nag. 36.
(8) *In re Kshatri Ram Singh & Ors.* A.I.R. 1941 Mad. 675.
(9) *Mor Mahomud v. R.* A.I.R. 1940 Sind 168, 172.
(10) *Wee Boo Soh v. R.* (1947) M.L.J. 93.
(11) *R. v. Akbar Badoo* I.L.R. 34 Bom. 599.

MAGISTRATE'S CRIMINAL APPEAL.

B. K. Das for the appellant.

Abdul Aziz (Federal Counsel) for the respondent.

Thomson J.: — This is an appeal from the Magistrate's Court at Taiping.

The three appellants were tried on a charge that on 28th January, 1956, they committed house trespass in order voluntarily to cause hurt to certain persons in contravention of section 451 of the Penal Code. Each of them was convicted and sentenced to six months imprisonment. Against these convictions and sentences they have all now appealed.

The case for the prosecution was that during the morning of 28th January there was some sort of altercation in Taiping town between the complainant's son and the first appellant and that that evening the first appellant, accompanied by the second and third appellants, came to the complainant's house at Windsor Estate and entered it and caused hurt to her and her two sons.

The defence of the first appellant was that he went alone to the complainant's house on the evening in question "to ask her why her son had assaulted me" in Taiping that morning. An altercation ensued outside the house in which the complainant and her children attacked him and in the course of which he defended himself.

The defence of the second and third appellants, who are apparently the brothers of the first appellant, was that they were not present at the incident and indeed at the time were attending a wedding feast at Ayer Tawar some considerable distance from the scene.

As regards the first appellant I have only to say that there was ample evidence, if it was believed, to justify his conviction and that I can see no reason for differing from the view of that evidence taken by the learned Magistrate. His appeal against conviction is accordingly dismissed and I see no reason to quarrel with the sentence imposed upon him which, to my mind, was a very suitable one.

With regard to the other two appellants, however, it has been argued that their convictions were vitiated by the admission against them of certain evidence which should not have been admitted and this argument calls for careful consideration.